September 7, 2018

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
Submitted via email: regcomments@ncua.gov

RE: Risk-Based Capital—Supplemental Proposal (RIN 3133–AE90)

Dear Mr. Poliquin:

The New York Credit Union Association ("NYCUA") appreciates the opportunity to comment on the above-referenced Risk-Based Capital Supplemental Proposal. The NYCUA represents New York's credit unions and more than 5.2 million credit union members.

Background

At its January 2014 meeting, the NCUA Board issued a proposed rule to amend the NCUA's Prompt Corrective Action ("PCA") regulations to require federally-insured, natural person credit unions with over $100 million in assets engaged in certain higher-risk activities to hold capital commensurate with the heightened risk.[1] The purpose of the proposed rule was to bring the NCUA's risk-based capital requirements in line with the capital requirements for corporate credit unions and to make these requirements more consistent with those of other federal banking regulatory agencies.[2]

The proposed rule sought to require higher risk-based capital requirements based on a variety of risk factors rather than focusing primarily on interest rate risk, and assign specific risk weights to each risk factor.[3] These additional risk factors

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[1] National Credit Union Administration; Prompt Corrective Action-Risk-Based Capital, 79 Fed. Reg. 11,183 (Feb. 27, 2014), *available at* https://www.gpo.gov/fdsys/pkg/FR-2014-02-27/pdf/2014-01702.pdf.
[2] Id. at 11,184.
[3] Id. at 11,187.

include: delinquent loans, concentrations of MBL loans and real estate-secured loans, equity investments, and additional off-balance sheet exposures.[4]

After reviewing and considering more than 2,000 comments from stakeholders, the Board issued a second proposed rule the following year at its January 2015 meeting.[5] Among other changes adopted by the Board based on the comments it received, the second proposal increased the asset threshold for a “complex” credit union for which the new risk-based capital ratio measures would apply from $50 million to $100 million and extended the effective date to January 2019.[6]

On August 8, 2018, the Board issued a Supplemental Proposed Rule to address comments received from stakeholders in response to the second proposal.[7] Among other changes, the Supplemental Proposal would increase the asset threshold for defining a credit union as complex from $100 million to $500 million in quarter-end total assets.[8] The Supplemental Proposal would also delay the effective date of the 2015 Final Rule by one year to January 1, 2020.[9]

<u>Discussion</u>

The NYCUA commends the NCUA for working with credit unions and stakeholders in continuing to improve its Risk-Based Capital Rule. Delaying the effective date until January 1, 2020 will allow for additional time to review and improve upon the risk-based capital rule. Raising the asset threshold to $500 million will significantly reduce the regulatory burden on those credit unions with between $100 million and $500 million in assets. The Supplemental Proposal is more appropriately tailored to capture only the largest credit unions that pose the greatest risk to the Share Insurance Fund if they were to fail. Increasing the threshold to $500 million is consistent with the long-standing sentiments of New York’s credit unions, which have conveyed their views in previous comments that $100 million would be an arbitrary threshold and would not effectively achieve the goal of reducing systemic risk.

While the NYCUA strongly supports the Supplemental Proposal, NYCUA continues to believe that implementing the proposed Risk-Based Capital Rule is unnecessary. One of the purposes of the Rule is to bring the NCUA’s capital requirements in line with those of other federal financial regulatory agencies, but such standards were never intended to apply to credit unions. To group credit unions in with all other

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[4] Id.
[5] National Credit Union Administration; Risk-Based Capital, 80 Fed. Reg. 4,339 (Jan. 27, 2015), *available at* https://www.gpo.gov/fdsys/pkg/FR-2015-10-29/pdf/2015-26790.pdf.
[6] Id.
[7] National Credit Union Administration; Risk-Based Capital-Supplemental Rule, 83 Fed. Reg. 38,997 (Aug. 8, 2018), *available at* https://www.gpo.gov/fdsys/pkg/FR-2018-08-08/pdf/2018-16888.pdf.
[8] Id.
[9] Id.

financial institutions is to ignore the fundamental differences in their mission and structure that set them apart and make them inherently different with regard to their risk profiles. Research subsequent to the financial crisis also indicates that the proposed risk-based capital regime would not have prevented the losses that occurred during the crisis, which were primarily the result of capital and liquidity issues of the corporate credit unions. The NCUA's proposed risk-based capital measures are therefore a solution in search of a problem and would impose significant regulatory burdens on many of New York's credit unions without protecting against losses to the Share Insurance fund in a meaningful way. Accordingly, the risk-based capital rule is unnecessary and unadvisable and should not be implemented.

In the alternative, the NYCUA respectfully submits that a higher total quarter-end asset threshold for complex credit unions would be more appropriate. For the twenty-six credit unions in New York with over $500 million in assets, the new risk-based capital requirements would unnecessarily impose a significant regulatory burden. The NYCUA proposes that only credit unions with more than $10 billion in assets truly pose a systemic risk to the share insurance fund and the asset threshold for complex credit unions should accordingly be raised to $10 billion.

Raising the asset threshold for complex credit unions to $10 billion would be consistent with the recommendations of the U.S. Treasury Department and with the thresholds set by the NCUA and other federal regulatory agencies. In a 2017 report, the Treasury Department recommended that "NCUA should revise the risk-based capital requirements to only apply to credit unions with total assets in excess of $10 billion or eliminate altogether risk-based capital requirements for credit unions satisfying a 10% simple leverage (net worth) test."[10] The NCUA considers credit unions with $10 billion or more in total assets to be systematically important to the National Credit Union Share Insurance Fund and subjects credit unions with over $10 billion in assets to supervision of the Office of National Examinations and Supervision. The asset threshold for supervision by the Bureau of Consumer Financial Protection is also $10 billion. The NCUA should increase the threshold for complex credit unions to $10 billion to bring its risk-based capital rule in line with its own rules and those of other agencies.

The NYCUA further proposes that the NCUA should use the delayed implementation period to consider broader capital reforms, including allowing credit unions to use supplemental capital to meet their risk-based capital requirements**.** The NCUA has previously indicated that it intended to issue a

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[10] A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS, U.S. DEP'T OF THE TREASURY 59 (2017), *available at* https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.

supplemental capital rule prior to the effective date of the risk-based capital rule. The NYCUA urges the NCUA to follow through on those statements.

The ability to take on supplemental capital would allow credit unions to expand products and services without diluting their regulatory capital. This would allow smaller, mission-driven credit unions to enhance the services they provide to the communities they serve and to reach more members of modest means. The Treasury Department supports a move toward allowing credit unions to use supplemental capital to meet their capital requirements. Specifically, the Treasury Department recommends allowing credit unions with total assets of over $10 billion "to rely in part on appropriately designed supplemental capital to meet a portion of their risk-based capital requirements."[11]

The purpose of the risk-based capital rule is to mitigate risks to the Share Insurance Fund. Authorizing credit unions to take on additional loss-absorbing capital would further that goal by creating a buffer for the Share Insurance Fund. The NYCUA urges the NCUA to use the additional time created by the delayed implementation of the risk-based capital rule to develop a framework to allow for the use of supplemental capital to meet risk-based capital requirements.

Conclusion

For the foregoing reasons, the NYCUA commends the NCUA's efforts to reduce the regulatory burden on credit unions with respect to the Risk-Based Capital rule by increasing the asset threshold for complex credit unions to $500 million and delaying the effective date by an additional year. The NYCUA continues to support the implementation of a supplemental capital rule that would allow credit unions to use supplemental capital to meet their risk-based capital requirements and urges the NCUA to implement a supplemental capital rule expeditiously.

On behalf of New York's credit unions and the 5.2 million members they serve, the NYCUA appreciates the opportunity to comment on this proposal and welcomes further discussion of its recommendations at NCUA's convenience.

Sincerely,

William Mellin
President/CEO
New York Credit Union Association

[11] Id.